IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 829 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TOTARAM JEHANGIRRAM BHATIA SINCE DECEASED THROUGH HEIRS
Versus
CHHOTABHAI SOMABHAI PATEL

Appearance:
1. Civil Revision Application No. 829 of 1986
MR BR SHAH for Petitioner No. 1
MR SP HASURKAR for Petitioner No. 1,1/1-1/5
MR MC SHAH for Respondent No. 1
MR AJ PATEL for Respondent No. 1,2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 29/01/2003

ORAL JUDGEMENT

This revision application is filed against the

order and judgment delivered by ld. Extra Assistant Judge, Nadiad on 18.2.1986 in Civil Regular Appeal No. 5/1984. The deceased petitioner (now since represented by legal heirs and representatives) Tolaram Jahangirram Bhatiya filed a Civil Suit No. 374 of 1981. The suit was filed by the petitioner stating that he was a tenant of the suit premises and ori. defendant no. 1-Chhotabhai Somabhai Patel was the landlord. The fact further reveals that the present petitioner and ori. defendant no. 2 are the real brothers. The suit premises situated near Juna Rasta, at Anand, was occupied by the plaintiff-petitioner since last 15 years before filing of the said Civil Suit No. 374 of 1981. The rent was paid previously at the rate of Rs. 35/p.m. which was increased to Rs. 65/ p.m. Further the case of the plaintiff that he and his real brother ori. defendant no. 2 were residing together in the suit premises. They resided together about 15 years and, thereafter defendant no. 2 started residing separately. It was contended that as such his brother defendant no. 2 had no right or interest as tenant in the suit premises. The plaintiff further contended that the amount of rent up to the month of August, 1981 was paid, even this fact was within the knowledge of both the defendants, however, ori. defendant no. 1 instituted in collusion a false suit being Civil Suit No. 346 of 1977 against the ori. defendant no. 2 without impleading the petitioner as party to the suit. In the said Civil Suit NO. 346 of 1977 decree for the possession was passed against the defendant no.2. Therefore, it was contended that the decree passed in Civil Suit No. 346 of 1977 against the defendant no. 2 was not binding to him. Two fold declaration was sought in the suit. Firstly, to declare the plaintiff-present petitioner as lawful tenant in in lawful possession of the suit premises and, secondly, decree obtained by defendant no. 1 in Civil Suit No. 346 of 1977 against the defendant no. 2 was not binding to him. A relief of permanent injunction was also sought for.

Defendant no. 1 contended the suit on the ground that plaintiff was not tenant and never resided in the suit premises nor he offered any rent. It was contended by defendant that ori. defendant no. 2 was his tenant since last 20 years previously to filing of the suit and defendant no. 2 was paying rent as well as municipal taxes. It was contended by the defendant no. 1 that the present suit was filed for prolonging the execution proceedings of the decree passed in Civil Suit no. 346 of 1977 against the defendant no. 2. It was contended that in the said suit, having regard to the contentions,

the plaintiff was not at all required to be joined.

The defendant no. 2 though served remained absent in the suit causing ex-parte proceedings against him.

The ld. trial judge after recording of the evidence and hearing the parties vide his judgment and order dated 30.11.1983 was pleased to dismiss the suit of the present petitioner with costs and hence, Civil Appeal No. 5 of 1984 was preferred by the ori. plaintiff-petitioner herein (now represented by legal representatives). After due hearing, the appeal came to be dismissed vide impugned order and hence, this revision application.

Initially, this revision application was filed as a second appeal but subsequently, converted into civil revision application. The dispute which was originally raised referred relationship of landlord and tenant and hence, this revision application is required to be considered under sec. 29(2) of the Bombay Rent Act as well as under sec. 115 of CPC.

Ld. advocate Mr. SP Hasurkar for the petitioner is heard at length and Mr. Shital Patel ld. advocate for Mr. AJ Patel is heard for respondent no. 2.

Ld. advocate Mr. Hasurkar while referring to the judgment vehemently contended that there is evidence that plaintiff as well as defendant no. 2 were residing together in the suit premises. This evidence is wrongly disbelieved by both the courts below. It was also pointed out that both the courts below failed to appreciate electric bills produced on record vide ex. 25 to 34 pertaining to the period from the year 1975 to 1977. These electric bills are issued to the plaintiff denoting the possession of the suit premises of the plaintiff. Further it was contended that vide ex. 35 a pass book of son of the plaintiff was produced and letters received by the son of the plaintiff are produced at ex. 52 to 54 and ex. 56 where the address of the suit premises is clearly mentioned. It is also argued that the plaintiff has produced his books of accounts for the payment of rent made to the landlord-defendant no. 1 for which no receipts were given to the plaintiff. It was argued that in the earlier suit between the defendant no. 1 and defendant no. 2, the plaintiff was not made a party and the decree passed in the said Civil Suit would not be binding to the plaintiff.

Having taken into considerations the contentions

raised and perusing the record of the revision application, it clearly appears that it was bounden duty of the deceased petitioner to prove that he was tenant of the premises. The evidence which the plaintiff produced on record in support of his contention was scrutinised and appreciated by both the courts below. So far as the electric bills are concerned, the bills does not reveal the identity of the suit premises. It also reveal that within the same area the plaintiff was occupying the premises other than the suit premises. Letters which were addressed to the son of the plaintiff, in view of both the courts below, the same might have been addressed to the premises which plaintiff was occupying within the same locality. Except this, there is no other direct evidence in favour of the plaintiff that he was occupying the suit premises as a tenant. The electric bills, letters and books of accounts also fail to establish that the plaintiff was tenant of the suit premises as said above and these evidences is properly appreciated by both the courts below and the conclusion of fact has been arrived at that the plaintiff was not occupying the suit premises as tenant. In absence of direct evidence of tenancy like rent note or rent receipt, it was incumbent upon the plaintiff to establish each circumstances cumulative effect of which would conclusively resolved in favour of tenancy of plaintiff. Therefore, both the courts below have rightly taken into account the evidence of the plaintiff and correctly appreciated and concluded that the plaintiff failed to establish his tenancy in respect of the suit premises, but however, this is not the only ground on which both the courts below dismissed the suit of the plaintiff. Both the courts below taken into consideration the assessment register of the Anand Municipality and extract produced on record at ex. 106, 107, 108 and 109 which clearly establish that the suit premises was occupied by defendant no. 2, but not only that the rent receipts which defendant no. 1 issued to the defendant no. 2 were also taken into consideration by both the courts below. Along with this admission of the plaintiff made in the cross-examination was also appreciated. The plaintiff admitted that his brother, defendant no. 2 had paid entire rent to defendant no. 1 and the name of defendant no. 2 was admitted to the record of municipality and tax assessment register as occupier of the suit premises. Even in the books of accounts produced though after the evidence of plaintiff was over, could not reveal the entry of rent paid by he plaintiff to defendant no. 1.

In view of the above discussion, when both the courts below have correctly appreciated the evidence on

record and have come to the conclusion of the fact that the plaintiff never occupied the suit premises in the capacity of tenant, the same cannot be interfered with in the revisional jurisdiction.

For the reasons aforesaid, this revision application stands dismissed. However, so far as the possession of the suit premises is concerned, this Court was pleased to grant stay against the recovery of the possession of the suit premises on usual terms. The said interim relief shall be operative till 7.3.2003. Rule is discharged with no order as to costs.

(J.R. VORA, J.)
mandora/